REMARKS

Claims 1-27 are pending in this application. Independent claims 1, 10, 15, and 22 have each been amended for purposes of clarifying the grammar. The amendments do not narrow the scope of the claims, nor are the amendments required for purposes of patentability. After carefully reviewing the cited art and the comments provided in the Office Action, applicant submits that the claims are patentable over the cited art for reasons discussed in greater detail below. Reconsideration of the claims and allowance of the application is requested.

In section 1 of the Office Action, claims 2-9, 11-14, 1-21 [sic] and 23-27 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant believes the examiner intended to refer to claims 16-21, rather than claims 1-21. In any event, applicant submits the claims are all directed to statutory subject matter.

Each of the independent claims 1, 10, 15, and 22 was previously amended to recite that its method elements are performed using at least one computer. Accordingly, these claims recite statutory subject matter, as implicitly acknowledged in the Office Action.

Claims 2-9 are all dependent on claim 1. Claim 1 recites, in part, "automatically, using at least one computer, representing an order in a first market and a second market, each of the first and second markets being able to execute the order and operating independently of each other." Claim 2 further defines this statutory subject matter by reciting "wherein each of the first and second markets operates according to a two phase action protocol." The further definition provided in claim 2 does not somehow cause the subject matter, initially considered to be statutory, to become nonstatutory.

Claim 1 additionally recites "automatically, using the at least one computer, ensuring the order is executed in at most one of the first and second markets." Claim 2 further defines this by stating that "the automatically ensuring includes obtaining permission to act from a controlling process." The further definition provided in claim 2 of the "automatically ensuring" element of

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claim 1 does not cause this element, initially considered to be statutory subject matter, to become nonstatutory. Applicant submits that the subject matter presented in claim 2, which incorporates and further defines the subject matter presented in claim 1, is statutory subject matter under Section 101. For similar reasons, claims 3-9, which also further define the elements of claim 1, also satisfy the requirements of Section 101.

Likewise, independent claims 10, 15, and 22 have each been determined as presenting statutory subject matter. Claims 11-14, 16-21 and 23-27 each incorporate and further define the elements of these respective independent claims and thus also present statutory subject matter. Withdrawal of the claim rejections under Section 101 is requested.

Withdrawal of the rejection under 35 U.S.C. § 101 of Claims 1-27 is requested.

In section 3 of the Office Action, Claims 1-27 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,421,653, which issued to May.

The claims of the present application are directed to a situation where an order is represented in multiple markets. Each of the multiple markets is capable of executing the order and operating independently of each other. In this situation, a mechanism is required to ensure that at most one market executes the order.

As explained at pages 22-23 of the present application (emphasis added at the end):

> An order can be represented in multiple markets without risk of multiple executions. Multiple executions are prevented via several mechanisms.
>
> In one mechanism, control over an order is associated with a particular process, usually an order ELF but sometimes an order umpire in fast symbol mode, and another process trying to execute the order must first obtain permission from the controlling process before actually executing; this mechanism is referred to as a two-phase commit.
>
> When an umpire declares itself to be in fast symbol mode, another umpire process can execute an order represented at the fast symbol umpire, only after the order is first cancelled from the first symbol umpire.

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In another mechanism, an order umpire can declare itself to be in-process, and then another umpire that subsequently becomes in-process skips its own orders that it finds, via the respective order tails of the orders, to be in-process at umpires having an in-process start time preceding the in-process start time of the instant order umpire.

It is also possible for an individual order to be in-process at an umpire, although the umpire itself is not in-process.

When an umpire is in-process, an order represented at the in-process umpire cannot be cancelled.

When an order is in-process at an umpire, the in-process order cannot be cancelled.

Accordingly, an order ELF must manage its order so that the order is in-process at no more than one umpire.

The two-phase commit and in-process mechanisms are integrated in system 5.

Figs. 93A-93C show an example of representing an order in multiple markets, specifically, an umpire asking an order ELF for affirmation before pairing the ELF's order with a contra-side order, and an order ELF canceling its order from a second market after the order is paired in a first market. See also Tables 14-16.

Conventional trading systems assume that an order represented in their marketplace is immediately available for execution, that is, conventional trading systems permanently operate in fast symbol mode. Accordingly, with conventional systems, when a trader wishes to represent an order in multiple markets, the trader runs the risk of multiple executions. Some trading systems are aware of other markets and will route orders in their market to another market when the price is better; however, ***conventional markets adhere to the concept of control over the order being embedded in the order. In contrast, system 5 separates control over the order from where the order is represented.***

An example illustrating a "use case" for representing an order in multiple markets while preventing duplicate execution is set forth at pages 101-110 of the present application.

In contrast, May relates to a system in which traders can submit orders anonymously to a trading system, and the system responds by presenting the orders to other traders with color coding based on the particular credit preferences of the other traders. The color coding enables the traders to assess the settlement risk in the trade prior to engaging in the trade, while preserving the anonymity of the party submitting the order. See, e.g., the abstract and Col. 9, lines 31-53 of May.

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The trading system disclosed by May is not concerned with representing an order in multiple markets nor ensuring that an order thus represented in multiple markets is executed in at most one of the markets.

In rejecting claim 1 (and indeed all the claims in the application), the Office Action referred to May at Col. 1, lines 19-29 and 54-67; Col. 10, lines 1-8; Col. 12, lines 27-46; and Col. 13, lines 35-65. Applicant has considered each of these passages and does not find disclosure that suggests, much less anticipates, each and every element of all the claims in the application.

More specifically, Claim 1 of the present application calls for "automatically, using at least one computer, representing an order in a first market and a second market, each of the first and second markets being able to execute the order and operating independently of each other" and "automatically, using the at least one computer, ensuring the order is executed in at most one of the first and second markets."

May fails to disclose or suggest a first market and a second market, each of the first and second markets being able to execute the order and operating independently of each other. Consequently, May also fails to show or suggest the claimed elements of representing an order in the multiple markets and ensuring the order is executed in at most one of the first and second markets. To the extent May refers to "markets," he does so by referring to the trading of particular instruments (i.e., equating the trade of a particular instrument as a "market"). See, e.g., Col. 33, lines 43-48 ("The user may customize the market entry interface 250 by adding and removing *instruments (i.e., markets)* displayed in the instrument display window 252. The user may *add new markets by entering an instrument symbol* (according to the symbology of the present invention) in to instrument identifier field 254."). (Emphasis added).

Absent a disclosure of all the elements of claim 1, May does not support a *prima facie* case of anticipation under Section 102. Claim 1 should be allowed.

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Claim 10 calls for "automatically, using at least one computer, sending the order to at least two markets, each of the at least two markets being able to execute the order and operating independently of each other" and "automatically, using the at least one computer, ensuring that execution authority for the order is in a single point."

As discussed above, May fails to teach or suggest at least two markets, each being able to execute the order and operating independently of each other. Consequently, May also fails to teach or suggest the elements of sending the order to at least two markets and ensuring that execution authority for the order is in a single point. Claim 10 should be allowed.

Claim 15 calls for "automatically, using at least one computer, affirming availability of shares of the order to one of the at least two markets, each of the at least two markets being able to execute the order and operating independently of each other" and "automatically, using the at least one computer, receiving a pairing report from the one market for at least one of the affirmed shares."

May fails to show or suggest at least two markets, each being able to execute the order and operating independently of each other, and consequently fails to show or suggest the claimed elements of affirming availability and receiving a pairing report. Claim 15 should be allowed.

Claim 22 calls for "automatically, using at least one computer, at a receiving market, receiving the order from a source, the order capable of being represented in at least two markets that operate independently of each other and are each able to execute the order, automatically, using the at least one computer, determining whether the receiving market has authority to execute the order" and "automatically, using the at least one computer, executing the order after the receiving market has determined that it has authority to execute the order."

As with the previous claims, May fails to teach or suggest at least two markets, each being able to execute the order and operating independently of each other. Consequently, with respect to claim 22, May also fails to show or suggest the claimed elements of determining whether the

receiving market has authority to execute a received order, and executing the order after authority to do so has been determined. Claim 22 should be allowed.

Dependent Claims 2-9, 11-14, 16-21, and 23-27, respectively depend from Claims 1, 10, 15, and 22, and thus incorporate all of the features that patentably distinguish their parent claim over May. Each of the dependent claims also present additional subject matter that, upon careful inspection of May, is not taught or suggested by May. Accordingly, applicant submits that the dependent claims are also patentable, both for their dependence on allowable base claims and for the additional subject matter they recite.

Issuance of a Notice of Allowance is proper. Should any issues remain needing resolution prior to allowance, the Examiner is invited to contact the undersigned counsel by telephone.

Respectfully submitted,

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